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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,753	03/04/2004	Tsutomu Fujimura	249976US0	5264
22850	7590	02/09/2007	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.			LEITH, PATRICIA A	
1940 DUKE STREET			ART UNIT	PAPER NUMBER
ALEXANDRIA, VA 22314			1655	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	02/09/2007	PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/791,753	FUJIMURA, TSUTOMU	
	<b>Examiner</b>	<b>Art Unit</b>	
	Patricia Leith	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 28 September 2006.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-6 and 8-17 is/are pending in the application.  
 4a) Of the above claim(s) 1-3 and 5 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1, 4 and 6-17 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892) —  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date: \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

**DETAILED ACTION**

Claims 1-6 and 8-17 are pending in the application.

Claims 1-3 and 5 were withdrawn from further consideration on the merits as they are directed toward a non-elected invention.

Applicant's summary of the Interview conducted on August 15, 2006 is accepted.

Claims 1, 4, 6 and 8-17 were examined on their merits.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a previous Office Action.

Upon further consideration of the Maor et al. reference, a new rejection is in order:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 10, 12, 14 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Maor et al. (US 6,248,340 B1).

To reiterate, Maor et al. (US 6,248,340 B1) teaches the hydrosoluble (propylene glycol) extract of *Zizyphus jujuba* fruit for use in topical creams due to its 'emollient properties'.

Applicant's arguments submitted with the amendment of 9/28/06 were fully considered, but not found persuasive.

Applicant's principal argument is that one of ordinary skill in the art would not be motivated to use 66% less of the jujuba in the composition disclosed by Maor et al. as Applicant alleges, because to do so, would decrease the emollient properties. However, there are several ranges of amounts of *Z. jujuba* suggested by Maor et al.

It is further taught by Maor et al. that the compositions containing the jujuba extract at 15% of the composition, were base compositions intended for mixing with topical carriers/vehicles such as water, emulsifying agents and thickeners (see placebo cream of column 5). Specifically, Maor et al. teach:

1. For preparing a 3% composition 2.55% of the base of step 1 of the

present invention and 0.45% Dead Sea water were mixed together and were added to the placebo at 35.degree. C. This composition was applied to the subjects as above and the Rz parameter was calculated as above. The results show that the roughness parameter Rz determined in accordance with the DIN norm improved in relative terms by 25.6% on the average. The values varied among the subjects between 14.1% and 39.1% in the relative terms, greater than the effect with "basic" medical creams, as mentioned above

2. For preparing a 5% composition 4.25% of the base of step 1 of the present invention and 0.75% Dead Sea water were mixed together and were added to the placebo at 35.degree. C. This composition was applied to the subjects as above and the Rz parameter was calculated as above. The results show that the roughness parameter Rz determined in accordance with the DIN norm improved in relative terms by 43.2% on the average. The values varied among the subjects between 28.5% and 49.5% in the relative terms, much greater than the effect with "basic" medical creams, or the placebo or the 3% composition as mentioned above. Up to a 12% composition may be used with very good results. Thus, the compositions of the present invention permits the care of normal and dry skin with a very high effect on skin roughness (column 5, lines 38-62)

Therefore, the amount of the jujuba extract in the first composition is approximately .38% and the amount of the jujuba extract in the second composition is approximately .63%. Because these creams were topically administered, Maor et al. anticipated the claimed invention.

It is deemed that topical application of *Z. jujuba* fruit and/or extract would have inherently enhanced the expression level of Rho kinase or myosin light-chain kinase because these products are the same products described by the claims as well as the Specification (specifically, the Specification teaches that the propylene glycol extract of *Z. jujuba* (*inter alia*) contains the active ingredient which manifests the enhancement in

the expression level of Rho kinase or myosin light-chain kinase – see page 10, Instant specification).

***Claim Rejections - 35 USC § 103***

Claims 1, 4, 6 and 8-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maor et al. (US 6,248,340 B1).

The teachings of Maor et al. were discussed *supra*. Maor et al. did not specifically disclose the use of only the fruit of *Z. jujuba*, or the particular amount applied to the skin of a patient.

One of ordinary skill in the art would be motivated to vary the amount applied to the skin in response to the condition of the skin; i.e., one would be motivated to apply a large amount of cream to the skin if the skin was very dry and cracked, and a lesser amount if the skin is less dry and cracked.

One of ordinary skill in the art would have been motivated to use the fruit of *Z. jujuba* in a concentrated or macerated form to apply to the skin because it was known that the fruit of *Z. jujuba* contained emulsifying properties. Thus, one of ordinary skill in

the art would have had a reasonable expectation that the fruit of the plant would have been advantageous for use in a skin-care product such as a lotion or a cream.

Applicant did not provide any specific arguments pertaining to the particulars of this rejection.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

No Claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia Leith whose telephone number is (571) 272-0968. The examiner can normally be reached on Monday - Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on (571) 272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Patricia Leith  
Primary Examiner  
Art Unit 1655

December 15, 2006

